

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Nebraska Technology Operations) Docket No. FC-1316
Center, d/b/a Kearney.net,)
)
Complainant,)
)
v.) ORDER DISMISSING COMPLAINT
)
Citizens/Frontier)
Communications,)
)
Defendant.) Entered: June 2, 2004

BY THE COMMISSION:

On February 10, 2004, Nebraska Technology Operations Center, d/b/a Kearney.Net (Complainant or NTOC) of Kearney, Nebraska, filed a formal complaint against Citizens/Frontier Communications (Defendant or Frontier) of Kearney, Nebraska. A copy of the complaint was served upon Defendant by certified mail on February 14, 2004. Defendant filed its Answer on March 4, 2004. The hearing on this matter took place on April 28, 2004. Notice of the hearing was provided on April 7, 2004.

Tim Lowenstein, sole proprietor of NTOC, appeared on behalf of Complainant. Kevin Saville and James Overcash appeared on behalf of Defendant. On Mr. Overcash's motion, Mr. Saville was admitted for the purposes of conducting the hearing on behalf of Defendant.

EVIDENCE

Mr. Lowenstein testified on behalf of NTOC that prior to June 19, 2003, NTOC subscribed to Cyber DS1 circuits (DS1) through Frontier. At Frontier's suggestion, NTOC decided to convert its service from DS1 to an Internet Digital Access Service (IDAS) in order to reduce costs. The DS1 service is an intrastate service within Frontier's Nebraska tariff. However, IDAS is an interstate service covered by Frontier's Federal Communications Commission (FCC) tariff.

Mr. Lowenstein stated that in July 2003, NTOC had an outstanding balance due to Frontier of \$18,213.76. This amount included a check in the amount of \$6,000 that was returned for insufficient funds but later cleared. Mr. Lowenstein received a letter from Frontier dated July 14, 2003, threatening disconnection of service if the overdue amount was not paid by July 25, 2004.¹ NTOC's request for additional time to make the

¹ A copy of the July 14, 2003, was received into evidence as Exhibit 6.

payment was denied. Mr. Lowenstein further testified that in order to make the payment, he secured a loan from his bank for the overdue amount minus the \$6,000 check on the understanding that payment of the overdue amount would bring his account "current." NTOC paid the overdue amount on July 24, 2003.

Mr. Lowenstein believed that all subsequent bills would reflect only his regular monthly charge. However, NTOC's August 7, 2003, invoice included his regular monthly charge in addition to the \$1,000 fee for switching to IDAS and \$1,216 for service on each circuit from June 19 to August 6, 2003, totaling \$9,958. NTOC has not yet paid the \$9,958.

Mr. Lowenstein received a letter from Frontier dated January 5, 2004, demanding payment no later than January 19, 2004, of \$13,735, which included the overdue amount of \$9,958 from the August 2003 invoice and threatening disconnection on January 20, 2004, if such payment was not received.² The postmark on the letter was January 16, 2004, and Mr. Lowenstein testified that he did not receive the letter until January 20, 2004. Upon receipt of this letter, NTOC filed an informal complaint and all interested parties participated in a telephone conference with Commission staff in an attempt to resolve the dispute. NTOC's service was not disconnected. However, the issues were not resolved, and NTOC proceeded with its formal complaint.

Mr. Lowenstein specifically testified that the \$9,958 at issue reflects charges for the IDAS circuits that were provided from June 19, 2003, through August 6, 2003.³ Mr. Lowenstein also testified that Frontier offered a payment plan to resolve the outstanding amount, but the parties could not reach an agreement.⁴

Amber Wine, senior accountant at Hellman, Main, Coslor & Kathol, maintains books for Mr. Lowenstein and NTOC. Ms. Wine testified that she pays all of NTOC's bills, completes annual tax returns and compiles personal financial statements and other information for NTOC as needed. Ms. Wine further testified that amounts billed by Frontier were inconsistent. Ms. Wine also stated that she was involved in the negotiations that led to the July 24 payment and that she also believed the payment would bring NTOC "current with Frontier".⁵

² The January 5, 2004, letter was entered into evidence as Exhibit 3.

³ Transcript p. 61, lines 21-25.

⁴ Transcript p. 63, lines 18-21.

⁵ Transcript p. 29, lines 22-23.

Ms. Wine testified that on April 5, 2003, she received a disconnect letter related to an account different from the account specifically at issue in the present complaint. Ms. Wine testified that she had previously sent a payment on the account but Frontier claimed to have not received it. Upon calling Frontier, Ms. Wine was told that although the letter stated that NTOC had until April 12, 2003, to contact the office that Frontier would disconnect NTOC's service on April 6, 2003 if payment were not received immediately.⁶ She delivered a check to the local office in order to avoid disconnection.

Adriane Dillard testified regarding Frontier's collection efforts with respect to NTOC's account. Ms. Dillard testified that payment plans were previously offered to NTOC regarding the amount at issue. She also testified that NTOC has a history of late payments on the account and that she was not inclined to offer any further time extensions for payment of the outstanding balance of \$18,213.76 in July 2003.

Mr. Dwaine Vasicek handles maintenance on behalf of Frontier and testified that Frontier has never disconnected NTOC's service. In the past, Mr. Lowenstein has contacted Mr. Vasicek at home regarding maintenance problems and Mr. Vasicek stated that NTOC is usually one of the first customers up and running during service outages. Mr. Lowenstein acknowledged that he had received quality service from the local Frontier office as described by Mr. Vasicek.⁷

OPINIONS AND FINDINGS

The ultimate dispute between the parties relates to the payment of overdue charges in July 2003 and how that payment would affect future billings. NTOC has characterized its complaint as one regarding the overall business practices of Frontier.

The Commission has jurisdiction to regulate the quality of service provided by all telecommunications companies within Nebraska and to resolve subscriber complaints regarding their service. If a subscriber files a petition, the Commission "may by order render its decision granting or denying in whole or in part the subscriber's petition or provide such other relief as is reasonable based on the evidence presented to the commission at the hearing".⁸

⁶ A copy of the March 30, 2004 letter was entered into evidence as Exhibit 5.

⁷ See Transcript pg. 102, lines 3-6.

⁸ Neb. Rev. Stat. § 86-803(7) (Reissue 1999).

It is clear from the evidence presented that Frontier did not handle this situation in the best possible manner. The delay in including the IDAS charges in Frontier's billing system coupled with frequent credits and inconsistencies on prior bills caused confusion regarding the effect of the \$18,213.76 payment.

Furthermore, Frontier's January 5, 2004, letter did not comply with the Nebraska disconnect rules as it was not mailed until approximately two weeks after the date of the letter and was not received by NTOC until the date of disconnect referenced within the letter. Such notice of disconnect is clearly insufficient.

Frontier was also unwilling to grant NTOC a 24-hour extension for payment in July 2003 due to the amount owed and the fact that NTOC's check in the amount of \$6,000 had been returned for insufficient funds.

In spite of these failings on the part of Frontier, the Commission finds, as explained more fully below, that it cannot award the relief sought by NTOC based upon a claim for poor business practices, and that a fine under the circumstances of this case would be inappropriate.

First, the charges reflected on the August 2003 invoice regarding the IDAS circuits from June 19 to August 6, 2003, never appeared on a previous bill and neither party disputes the amounts charged or that Frontier provided the services represented by those amounts. Furthermore, no evidence indicates that Frontier intentionally mislead NTOC regarding the amounts due and owing in July 2003. Instead, the evidence shows that the amounts reflected on the August 2003 invoice had not appeared on the billing system at the time the July 24, 2003, payment was made. The August 2003 invoice shows an unpaid balance of \$0.00, and NTOC's account was current. Finally, when NTOC contacted Frontier, efforts were made to establish a payment plan with respect to the unexpected charges. However, the parties could not reach an agreement.

Although Frontier's January 5, 2004, disconnect notice was insufficient, no disconnect occurred and NTOC suffered no harm as a result of the delay in receiving the letter.

In spite of the fact that Frontier refused to grant a 24-hour extension for the July 2003 payment, it had frequently granted payment extensions in the past at the request of Ms. Wine, and had previously agreed to payment plans for past due amounts. The fact that they were unwilling to do so in this instance was not unreasonable.

NTOC seeks a complete discharge of the amounts currently owed for the period of June 19 through August 6, 2003, as a result of Frontier's business practices. Such a remedy is not appropriate pursuant to the evidence presented. The Commission is permitted to fine a company for such infractions and due to the fact that Mr. Lowenstein testified favorably regarding the service and business relationship he has enjoyed with Frontier until the present issue arose, the Commission finds that assessing a fine would be inappropriate.

Based upon the remedy sought by NTOC, the present claim is more similar to a billing dispute. Commission regulation require that "[b]ills to customers ... be rendered regularly and shall contain a clear listing of all charges."⁹

The Commission has jurisdiction to investigate and resolve billing disputes between a customer and an exchange carrier.¹⁰ However, that jurisdiction does not extend to billing for interstate services. IDAS falls within a federal tariff within the jurisdiction of the FCC and is beyond the scope of the Commission's jurisdiction under these specific circumstances.

However, even assuming that the Commission had jurisdiction to resolve an issue regarding an invoice for a service within a federal tariff, the amounts due and services received are not in dispute. No question of fact exists regarding whether the services for which NTOC was billed were provided or whether the charges for those services were ever paid.

After due consideration and being fully advised in the premises, the Commission is of the opinion and finds that the present complaint should be dismissed as the remedy sought by NTOC is beyond the scope of the Commission under the specific circumstances presented in this case.

The Commission strongly encourages the parties to cooperate to reach an agreement to resolve the dispute in such a way to maintain their existing business relationship.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that NTOC's complaint is dismissed.

⁹ Nebraska Administrative Code, Chapter 5, Title 291 § 002.017A.

¹⁰ Nebraska Administrative Code, Chapter 5, Title 291 § 002.017B.

MADE AND ENTERED at Lincoln, Nebraska, this 2nd day of June, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director